IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5615 of 2007()

CRIME NO.87/2004 OF MUVATTUPUZHA POLICE STATION

PETITIONER/ACCUSED

WILSON JOSEPH, AGED 28 YEARS,
S/O.JOSEPH, MITTATHANKAL HOUSE,
KOOVAKANDAM P.O., POOMALA, THODUPUZHA,
IDUKKI.

BY ADV. SMT.T.B.MINI

RESPONDENTS: STATE

S.I. OF POLICE, MUVATTUPUZHA POLICE
STATION, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.5615 of 2007

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Dated this the 19th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner apprehends that he may be arrested as an accused in a crime registered, inter alia under Sec.308 IPC. The crime was registered in 2004 about an incident which took place on 7.02.04. The petitioner has not been arrested yet.

2. The learned Public Prosecutor after taking instructions submits that the investigation into the crime has already been over. Final report has already been filed on 30.04.04. The petitioner is not required to be arrested. The case has been registered as C.P.No.25/2004. The petitioner may be directed to be appear before the learned Magistrate in the committal proceedings and seek regular bail, submits the learned Public Prosecutor.

3. I find merit in the opposition by the learned Public Prosecutor. Final report have already been filed and the learned Magistrate having already registered committed proceedings against the petitioner and I am satisfied in these circumstances that the petitioner must appear before the learned Magistrate and seek regular bail.

4. After the decision in **Bharat Chaudhary v. State of Bihar**

[A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE